

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Roger Syntell Legette, #243366,)	
)	
Petitioner,)	CA No. 6:07-0633-HMH-WMC
)	
vs.)	OPINION & ORDER
)	
Anthony Padula, Warden of Lee)	
Correctional Institution,)	
)	
Respondents.)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge William M. Catoe made in accordance with 28 U.S.C. § 636(b) and Local Rule 73.02 the District of South Carolina.¹ Roger Syntell Legette (“Legette”) is a pro se state prisoner seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. Magistrate Judge Catoe recommends dismissing Legette’s petition as successive. Legette filed objections to the Report and Recommendation.

Upon review, however, it appears that Legette’s petition is barred by the one-year statute of limitations. See 28 U.S.C. § 2244(d)(1); Hill v. Braxton, 277 F.3d 701, 705 (4th Cir. 2002) (“Even though the limitations period is an affirmative defense, a federal habeas

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

court has the power to raise affirmative defenses *sua sponte*”). Therefore, Legette has ten days from the date of this order to respond and specifically to notify the court of “any facts not apparent to the court that militate against the application of the limitations bar.” Id. at 707.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
April 13, 2007